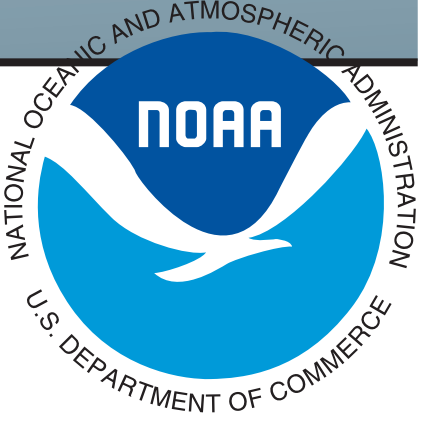


Getting to Restoration: Elements that lead to an Early Cooperative Agreement



Process

- Meet directly with the responsible party and the responsible party attorney
- Establish cooperative relationships with opposing counsel
- Assess intentions and whether all participants are ready to cooperate
- Ensure both sides are sacrificing—"give and take" from the responsible party and trustees
- Table issues for later discussion instead of trying to cover every contingency
- Include a component for conflict resolution— "Agree to disagree"
- Ensure each trustee has his/her own vote
- Ensure equal representation of trustees and RPs on the coordinating committee and the technical committees

Early Agreements should

- Provide an over-arching framework listing primary objectives, roles, and responsibilities
- Use a model Memorandum of Agreement—one that has worked in the past
- Develop mini- or issue-agreements only for small cases
- Include a mechanism to terminate studies
- Ensure responsible party payment for assessment costs up-front or reimbursement of costs
- Focus on restoration-based assessments
- Stipulate developing a technical framework document that focuses on details of data collection and restoration planning
- Include example work- or study-plan templates to include as attachments
- Allow for flexibility in terms of trustees and responsible parties conducting independent studies

Barriers to cooperation

- Stipulated penalties in settlement language when dealing with good corporate actors
- Poorly documented trustee costs
- Lack of coordination among trustee agencies
- Agreements that are too specific
- Too many negotiators at the table—"too many cooks in the kitchen"
- Unclear trustee and responsible party roles and authorities
- Uncertainty in the cleanup remedy at Superfund sites

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